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July 15, 2011

Consultation Policy Comments,
Department Of Interior, Room 5129
MIB, Washington, DC 20240

Re: Comments on Policy on Consultation with Indian Tribes

The Seminole Tribe of Florida ("Seminole Tribe") has coordinated a review of the Department of Interior's ("DOI") proposed Consultation Policy (76 Federal Register 28446, May 17, 2011). Please accept this letter as the Seminole Tribe's formal comments on the proposed Consultation Policy. First and foremost, we applaud DOI's efforts to improve and strengthen its trust and consultation obligations to Tribal Nations. Meaningful government-to-government consultation is essential to effective decision-making that accounts for Tribal governments' unique status and relationship with the Federal government; including, but not limited, to Tribal self governance and self determination. The following comments are intended to assist DOI in developing its policy so that consultation can be meaningful and productive for all parties involved.

I. Independence of Tribal Liaisons and Tribal Governance Officers

The Seminole Tribe is encouraged that the proposed policy provides that government-to-government consultation must involve an appropriate DOI official that is knowledgeable, has authorization to speak for DOI, and has delegated authority to make decisions for DOI. Having appropriate DOI decision makers involved in the consultation process will make consultations more efficient. However, for consultation to truly be in good faith and meaningful, the appropriate DOI official needs to be free from possible influence from other DOI officials. Instituting such independence will ensure the consultation process is truly transparent and being done in good faith.

II. Early Consultation

The Seminole Tribe is also encouraged by DOI's commitment to initiate consultation early in the planning process to allow a reasonable opportunity for tribal participation and response. In order to ensure tribal participation/response is meaningful and not just perfunctory, it is essential that "early consultation" means that it occurs before decisions have been made and before resources have been committed to an action. Therefore, we request that the consultation policy acknowledge that the term "early consultation" occurs early in the planning process and before any key decisions/actions are formalized and before any resources are committed.

III. Consultation Guidelines

While the consultation policy is intended to be uniform practices and standards for the DOI and all bureaus and offices under its purview, it appears the consultation policy contemplates the development of individual consultation protocols with Tribal governments. The Seminole Tribe believes this is prudent, as this would allow for consideration of the individualized needs of each Tribal government. We recommend that the consultation policy encourage its bureaus and offices to develop individual consultation protocols. It is also recommended that the consultation policy specifically require DOI's bureaus and offices to develop such individualized protocols when requested by a Tribal government. This will ensure that such requests are not ignored and are given priority.

The Seminole Tribe agrees with DOI's requirement that notification of consultation must be provided to affected Tribal governments in writing 30 days prior to a scheduled consultation. However, it should be noted that Tribal governments are just that, governments. The Seminole Tribe has several departments that handle the day-to-day operations of the Seminole Tribe. It is therefore imperative that the consultation notifications be sent to the Tribal leadership and copied to the appropriate Tribal department. This emphasizes the need to have individualized protocols that dictate the appropriate persons that should be notified of potential consultation matters. For example, consultation notifications concerning forestry matters would likely be sent to a Tribal government's environmental department while a notification concerning historic properties would be provided to its historic preservation office. It would be unwise to assume that notification sent only to a Tribal Chairman would be directed to the appropriate Tribal department in time to allow for timely consultation.

Finally, it is important that the consultation policy emphasize that informal forms of communication such as e-mails, form letters, or telephone calls are not sufficient to comply with the government-to-government consultation requirements. Consultation is a formal process that must be initiated in writing. Depending on individual tribal preferences, informal forms of communication may become suitable forms of communications after consultation has been formally initiated in writing. It is recommended that the consultation policy direct that informal communications can only be used during consultation and in aid of a consultation after Tribal consent has been given. It is also recommended that the consultation policy require any

communication with Tribal governments intended to concern a future, past, or ongoing consultation be clearly identified as a consultation communication.

IV. Consultation Process Support

The Seminole Tribe is pleased to see that DOI's consultation policy contemplates the need to have mechanisms in place to support effective consultation, which includes planning and facilitating functions. It should be noted that the Seminole Tribe consults with numerous federal agencies on a variety of issues. This requires the Seminole Tribe to commit significant resources and monies to the federal consultation process. It is also important to note that sometimes the Seminole Tribe lacks the personnel or expertise to effectively consult on a given matter. It is therefore highly recommended that DOI's consultation policy factor in the limitations that inhibit Tribal governments from being able to meaningfully consult or provide input. Such consideration should include sufficient funding for the consultation process and providing technical expertise to Tribal governments when needed. It is common for federal agencies to host consultations; however, the time and expense of Tribal governments to travel to and participate often is the limiting factor. DOI's trust obligations should account for this limitation and provide the necessary assistance to ensure the consultation process occurs and is meaningful for all Tribal governments.

V. Stages of Consultation Process

The consultation process contemplates three stages:

1. Initial planning stage;
2. Proposal development stages, and
3. Implementation of final federal action stage.

The Seminole Tribe agrees that the consultation process should be a formal process with a beginning and an end. However, we respectfully request an "identification stage" be added to the process as the first stage. During the "identification stage," DOI would determine which activities may be appropriate for consultation. The identification stage would occur at the regional and national level in order to identify, in advance, national and regional actions that would be appropriate for consultation. The Seminole Tribe views identification as being distinct from the activities described in the proposed planning stage and believes it will ensure a thoughtful process for identifying appropriate consultation matters early on in the process.

The consultation policy provides for a proposal development stage, which appears to be the stage where meaningful input from affected Tribal governments occurs. The Seminole Tribe recommends that this stage provides additional detail on how government-to-government consultation will occur. For example, the consultation policy should provide that during this stage, tribes will provide input on the subject action, which will include a variety of written and oral interactions and several rounds of consultation. It should also be made clear that the

consulting federal agency must provide the affected Tribal governments with sufficient information and time to provide meaningful and informed input. This will necessarily require the federal agencies to conduct several rounds of consultation to develop Tribal input.

The final stage, implementation, provides that DOI will communicate in writing an explanation of the final decision. The Seminole Tribe recommends that the written communication should detail how the affected Tribal government's input was considered in the final decision and should be from a senior DOI official. It is also important to note that the consultation process does not necessarily conclude with an agency's final decision. The consultation policy should account for post-decision follow up in addition to post-consultation review/evaluation.

VI. Improving the Consultation Process

The Seminole Tribe concurs with DOI that a plan of action should be developed for the continued improvement of the consultation policy. The proposed policy outlines four (4) components that may be included in the final action plan. These components are:

1. Annual meetings between the Secretary of the DOI and tribal governments;
2. Communication through regular gatherings of Tribes;
3. Institutionalizing a joint Tribal-Federal consultation team; and
4. Soliciting Tribes' evaluation of consultation practices and procedures.

The Seminole Tribe believes these four (4) components are critical and should be included along with any other appropriate components that are identified.

VII. Accountability and Reporting

Accountability and reporting is critical to ensuring the intent of the consultation policy is implemented and followed. The Seminole Tribe is encouraged that the proposed consultation policy provides for a level of accountability and reporting, including a reference to "performance measures consistent" with the policy. It is recommended that these performance measures be defined and not left to the interpretation of individual bureaus and offices. This will ensure uniform performance measures across all bureaus and offices that can be used to determine success and facilitate process improvements.

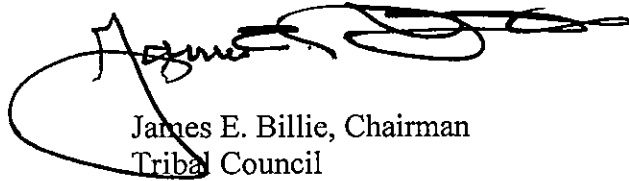
It is also recommended that the consultation policy detail the levels of consultation management and their respective roles. We understand there will be tribal liaison officers and a tribal governance officer. It is unclear how these officers will interact with each other and what the hierarchy of consultation decisions will be or how consultation decisions will be elevated to higher DOI officials. It is also unclear how DOI will oversee consultations conducted by the

various bureaus and offices under its purview. This process and the overall consultation hierarchy should be described in detail.

Finally, any accountability and reporting concerning government-to-government consultations must include tribal input and evaluation in order to have a balanced accounting of the consultation process. Such balanced accounting is necessary to have a complete assessment and to identify areas that need improvement.

Once again, we appreciate the opportunity to comment on the proposed consultation policy and are encouraged by DOI's efforts to strengthen its relationship with Tribal governments and ensure government-to-government consultations are meaningful. Government-to-government consultation is the hallmark of the federal government's trust obligations to Tribal governments and is the foundation of Tribal sovereignty and self-determination. The federal government's trust obligations and Tribal self-governance should be the ultimate guiding principle for all consultations and consultation policies. The proposed consultation policy is an important first step and we look forward to the opportunity of working with DOI to finalize this policy.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Billie", is written over a large, stylized circular flourish.

James E. Billie, Chairman
Tribal Council
Seminole Tribe of Florida

MC/mc

c: Jim Shore, General Counsel
Steve Walker, Esquire
Stan Rodimon, Chief Community Planning and Development Officer
Craig Tepper, Director, ERMD
Willard Steele, Director, THPO